

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.Z., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JORGE Z.,

Defendant and Appellant.

D054920

(Super. Ct. No. EJ2548D)

ORDER MODIFYING OPINION AND
DENYING PETITION FOR REHEARING

[No Change in Judgment]

THE COURT:

It is ordered that the opinion filed herein on October 1, 2009, be modified to delete the following quoted text on page 12, first paragraph following II *Disposition*:

"The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).)"

The paragraph now reads:

"Even though children may be dependents of the juvenile court, they shall not be removed from the home in which they are residing at the time of the petition unless there is clear and convincing evidence of a substantial

danger to the child's physical health, safety, protection, or physical or emotional well-being and there are no 'reasonable means' by which the child can be protected without removal." (*In re Henry V.* (2004) 119 Cal.App.4th 522, 528; § 361, subd. (c).) "The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

There is no change in judgment.

The petition for rehearing is denied. Justices McConnell and Huffman concur in the denial; Justice McIntyre would grant.

McCONNELL, P. J.

Copies to: All parties